

Chh2004 (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 114/2004

PETITIONERS

- P. R. No. 115/104
Presented by Shri Shrikumar Singh
dated 12.01.04
1. Advasi Machua Sahakari Samiti Maryadit, Sondur (a society registered under the Chhattisgarh Co-operative Societies Act, 1960) through its President Punarad Ram, S/o Shri Lakhu Ram, aged 54 years, Occupation-Fisherman, R/o Village Mechka, Tahsil-Nagari, District Dhamtari (C.G.)
 2. Prathmik Matsya Sahakari Samiti Maryadit, Koliyari (a society registered under the Chhattisgarh Co-operative Societies Act, 1960) through its President, Rikhi Ram Nishad, S/o Motilal Nishad, aged 29 years, Occupation-Fisherman, R/o Village-Tirra, Post Office-Koliyari, Tahsil & District Dhamtari (C.G.)

-VERSUS-

RESPONDENTS

1. State of Chhattisgarh through Principal Secretary, Department of Agriculture (Fish Farming), Mantralaya, D.K.S.Bhavan, Raipur (C.G.)
2. Secretary, Department of Agriculture (Fish Farming), Mantralaya, D.K.S.Bhavan, Raipur (C.G.)
3. Secretary, Department of Co-operative, Mantralaya, D.K.S.Bhavan, Raipur (C.G.)
4. Registrar, Co-operative Societies, State of Chhattisgarh, Raipur (C.G.)
5. Managing Director, Chhattisgarh State Co-operative Fish Federation Ltd., Raja Talab, Raipur (C.G.)

**WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA
FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.**

91

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.114 of 2004

Adivasi Machua Sahakari Samiti Maryadit, Sondur and another.

Versus

State of Chhattisgarh and others.

POST FOR ORDER ON 3rd FEBRUARY, 2004

**Sd/-
L.C. Bhadoo
Judge**

92

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.114 of 2004

Adivasi Machua Sahakari Samiti Maryadit, Sondur and another.

Versus

State of Chhattisgarh and others.

Present:-

Shri Vivek Tankha, Senior Advocate with Shri Rajeev Shrivastava, Advocate for the petitioners.

Shri P.S. Koshy, Govt. Advocate for the State/respondents 1 to 4.

Shri Prashant Mishra, Counsel for the intervener.

ORDER

(Passed on 3rd February 2004)

As per L.C. Bhadoo J.

By this petition filed under Articles 226/227 of the Constitution of India the petitioners have challenged the action of respondent No.5; notice dated 9th January 2004 inviting tenders for marketing of the fishes. The ground of challenge is that the petitioners were granted rights of fishing and marketing of Sondur and Gangrel Reservoirs by the Fish Federation in compliance of the order dated 24-3-2003 passed by respondent No.1 and the order dated 6-10-2003 of Secretary Department of Fishing, and agreements were entered into between the parties. However, respondent No.5 in contravention of the order dated 24-3-2003 passed by respondent No.1 has called tenders for marketing of the fishes of Sondur and Gangrel Reservoirs along with others.

2. Brief facts giving rise to filing of this petition are that the petitioners are registered Societies under the Societies Act, 1960 as per Annexure-P/1 and Annexure-P/2. These societies have been constituted with an object to protect the interest of poor fishermen scattered in the entire State of Chhattisgarh, as they are illiterate, living below the poverty line and belonging to socially and economically backward class.

3. Respondent No.1 in pursuance of the order dated 18-2-2003 passed by the Council of Ministers of the State of Chhattisgarh passed an order dated 24-3-2003 directing to allot the lease of reservoirs for fish culture in the following order:-

- (i) Registered Fishermen Co-operative Societies.
- (ii) Fishermen Group.
- (iii) Fishermen in person.
- (iv) The area where families are displaced due to submergence in the year 1965 or thereafter.
- (v) If any of the abovementioned four group is not available in any village or area, then self helping groups.

The order passed by respondent No.1 is Annexure-P/5.

4. In compliance of the order dated 24-3-2003, on 6th October 2003, the Secretary, Department of Agriculture (Fish Farming), State of Chhattisgarh passed another order as per Annexure-P/6 handing over the management of six reservoirs to the Fish Federation for a period of one year on an experimental basis. The Fish Federation entered into an agreement with the petitioner No.1 for Sondur Reservoir and the petitioner No.2 for Gangrel Reservoir for a period of fifteen days. Copy of the agreement entered into between Fish Federation with the petitioner No.1 and No.2 are Annexures-P/7 and P/8 respectively. On expiry of the period indicated in the agreement and on representation made by the petitioners, the Managing Director, respondent No.5 of the Fish Federation directed the petitioners to continue the fish rearing as per the terms and conditions of the agreement till the marketing policy is decided and looking to the financial condition of the Fish

Federation it was extended until further orders. Copy of the order dated 15-12-2003 is Annexure-P/9.

5. The further case of the petitioners is that as per the above orders dated 24-3-2003 and 6-10-2003 the Government and the Fish Federation were duty bound to permit the petitioners for fish rearing for a period of one year. However, the Managing Director Fish Federation without revoking the order dated 15-12-2003 by which the petitioners were permitted to continue fishing and its marketing has invited tenders for marketing of the fishes of Gangrel and Sondur Reservoirs along with four other reservoirs vide Annexure-P/10. The petitioners were given right of fishing and its marketing in compliance of the order dated 24-3-2003 passed by respondent No.1. The petitioners belong to socially and economically backward class of the society and they are living below the poverty line. The petitioners society as well as their Apex Society Fish Federation has been constituted with a view to uplift the living standard of the fishermen of the State and to protect their economic interest. The impugned order would not only frustrate the object of forming the Fish Federation but it would frustrate the entire Co-operative movement of the State which is a tool for bringing socialism in the society and uplifting the downtrodden class of the society. Therefore, the action of respondent No.5 is arbitrary, illegal and contrary to the law applicable to the present case. Against his own order dated 15-12-2003 allowing the petitioners to continue fishing and marketing until further orders Respondent No.5 has traveled beyond his jurisdiction. Therefore, the petitioners prayed for quashing the tender published by the Managing Director, Fish Federation on 9-1-2004 and allowing them to continue fishing and marketing of the fishes from Sondur and Gangrel reservoirs.

6. Return has been filed on behalf of respondents 1 to 4 stating that the instant petition is not maintainable for the reason that under Section 64 of the Chhattisgarh Co-operative Societies Act if there is any dispute in respect of the management or business of the society, the same shall be referred to the Registrar by any of the parties. The petition is also not maintainable for

the reason that the petitioners are the persons who are operating only in Sondur and Gangrel reservoirs, whereas there are five other reservoirs, which have also been included in the tender list. This petition is also not maintainable for the reason that highly disputed questions of facts are involved in the petition which can be primarily adjudicated upon after recording the evidence and appreciation of the documentary evidence, which is not permissible under Articles 226/227 of the Constitution of India.

7. The further case of the State is that the State of Chhattisgarh vide order dated 24-3-2003 had issued the policy in respect of fishing to be conducted in the State of Chhattisgarh. In the said fishing policy it was categorically held that all those reservoirs/ponds above 200 hectares would be auctioned by the fisheries department itself as per Annexure-R/1. The State Government vide its order dated 30th August 2003 on completion of the lease w.e.f. 15-6-2003 five of the reservoirs in the State of Chhattisgarh were surrendered to the Fisheries Department. However, subsequently since the Fish Federation had entered into a financial crunch, they made a request to the State Government and the State Government vide its order dated 6-10-2003 keeping the new fishing policy in abeyance granted the Fish Federation one year period on an experimental basis with conditions that firstly the Fish Federation shall itself conduct the fishing and shall not get the fishing done through the contractors and the fishing should be done by the fishermen of the fisheries department and secondly the said Fish Federation shall in turn pay royalty to the State Government @ 4% per kg, as per Annexure-R/3.

8. The Fish Federation vide resolution dated 16-9-2003 decided that the tenders should be called for the marketing of the fishes which are lifted from the different reservoirs under the Fish Federation, as per Annexure-R/4. Since the petitioners period for fishing and marketing was till 15-12-2003 and for the reason that no finalization in respect of the subsequent tenders was finalized, the petitioners were granted permission to continue fishing and marketing till the alternative arrangement is made, as per

Annexure-R/5. Thereafter the impugned order calling for tender notice were published in the newspaper. The petitioners have the right to the extent of fishing in the reservoirs. As far as marketing is concerned, it is always the prerogative of the Fish Federation which is the owner of the reservoirs and also the organization which is carrying on with the food seed production and rearing and development of the reservoirs and the fisheries in the reservoirs, therefore, the petitioner be dismissed.

9. I have heard the learned counsel for the parties.

10. Learned Senior Counsel for the petitioners argued that all the six ponds were handed over to the Fish Federation for a period of one year on an experimental basis vide order dated 6th October 2003. It was further prescribed that the Fish Federation itself will look after the fishing work through fishermen and will ensure that the fishermen are benefited maximum and these ponds will be given to the Fish Federation on the basis of royalty of Rs.4 per kg prescribed by the State and thereafter the Fish Federation gave these ponds to the Fishermen Co-operative Societies under the various agreements. The petitioners 1 and 2 were given these two ponds under the agreements Annexures-P/7 and P/8 respectively up to 15-12-2003 and that period was extended until further orders. Under these agreements the Fishermen Societies were given the right of fishing as well as marketing. Therefore, these ponds were under the control of the Fish Federation for period of one year on an experimental basis, as such respondent No.5 was not entitled to issue the notice inviting tenders for sale of the fishes.

11. On the other hand, Shri Prashant Mishra, learned counsel for the intervener and Shri P.S. Koshy, Govt. Advocate argued that as per Annexure-P/5 the ponds which are more than 200 hectares area are to be auctioned as per Clause 1(1.4) of Annexure-P/5. As per the resolution of the Fish Federation dated 16th September 2003 (Annexure-R/4) it was decided that the fishing in the six ponds would be done by the Fish Federation at the prescribed rates, whereas the marketing of the fishes would be done on the tender basis. Therefore, the petition of the petitioners deserves to be

dismissed. He further argued that the tender notice for marketing of the fishes has been issued for seven ponds whereas, the petitioners have challenged the notice to the extent of ponds of Sundur and Gangrel Reservoirs which are given to them under the agreements. However, the fishing rights of the petitioners are still continuing.

12. Having heard the learned counsel for the parties, I have perused the records. The notice inviting tenders for marketing of the fishes was issued by respondent No.5, Managing Director on 9-1-2004, under Annexure-P/6. All the 6 ponds were handed over to the Fish Federation for a period of one year on an experimental basis with the condition that the fishing will be done by the Fish Federation itself and it will not be given to any contractor and for that purpose the Fish Federation will get the work done by the fishermen and will ensure that the fishermen are benefited and in turn the Fish Federation gave these ponds to various Fish Co-operative Societies under an agreement up to 15th December 2003 for fishing as well as marketing of the fishes. By an order dated 15-12-2003 Annexure-P/9 the Managing Director, respondent No.5 extended that period till the policy decision regarding the marketing of the fishes is taken and looking to the financial condition of the Fish Federation the period was extended until further orders. As per the Resolution Annexure-R/4 dated 16th September 2003 the Fish Federation in its meeting under agenda item No.-A resolved that the fishing in the 6 transferred reservoirs should be done by the Fish Federation on the prescribed labour rates and the marketing should be done on tender basis.

13. In view of the above resolution of the Fish Federation dated 16th September 2003 (Annexure-R/4) the Fish Federation itself was required to do the fishing activities of all the 6 reservoirs and as far as marketing is concerned that should have been given on the tender basis. The agreement entered into between the Fish Federation and the petitioners was over on 15th December 2003, however, it was extended until further orders. Therefore, legally that could have been terminated on any moment after 15th December 2003, as the same was extended until further orders. The

respondent No.5 Managing Director of the Fish Federation by the impugned notice inviting tenders for marketing of the Fishes (Annexure-P/10) had invited tenders for marketing of the fishes of the seven reservoirs. The above action of respondent No.5 is in consonance with the resolution passed by the Fish Federation in its meeting dated 16th September 2003. Therefore, I do not find any illegality or impropriety in this action of respondent No.5.

14. Moreover, as far as fishing is concerned that is still with the petitioners and the petitioners are not deprived of their rights of fishing from Sondur and Gangrel Reservoirs. The notice inviting tenders has been issued only for the purpose of the marketing of Sondur and Gangrel Reservoirs along with other five reservoirs and this action of respondent No.5 is not going, in any way, to effect the interest of the petitioners. They will be entitled to their prices whatever received. Moreover, the petitioners have not been able to lead and establish that how this action of respondent No.5 is going to affect their interest. Moreover, the other fishermen Societies to whom other 5 reservoirs allocated have not come forward rather as per the resolution they have participated in the bids.

15. The learned counsel for the State further argued that in view of the provisions of Section 64 of the Co-operative Societies Act if any dispute in respect of the management or business of a society the same shall be referred to the Registrar by any of the parties, therefore, the writ petition does not lie in the matter. But, I do not find any force in this argument of the learned counsel for the State for the reason that the present dispute is not in respect of the management or business of the society, but the dispute is between the State and the Society, therefore, Section 64 does not apply in this case.

16. In the result, I do not find any substance in this petition. The same is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge